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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
STEVEN P. TITO,)	of Du Page County.
)	
Petitioner-Appellant,)	
)	
v.)	No. 07-D-1409
)	
DEANNA L. TITO,)	Honorable
)	Robert E. Douglas,
Respondent-Appellee.)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Hudson concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court correctly: (1) modified petitioner's child support obligation based on a substantial change in his income; and (2) calculated the arrearage owed in support based on available information concerning petitioner's income.

¶ 2 Petitioner, Steven Tito, appeals the trial court's orders concerning child support. Specifically, petitioner contends that the court erred when it: (1) did not include proceeds from his sale of stock under the child support cap, and (2) included those proceeds when it calculated the amount of his arrearage in child support. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Petitioner and respondent, Deanna Tito, had two children during the course of their marriage. The trial court entered a judgment dissolving the marriage on February 4, 2008. Pursuant to the parties' marital settlement agreement (MSA), petitioner was to pay child support to respondent as follows:

“Based on Husband's net income of \$6000 monthly from his employment at Novell Corporation, he shall pay 28% statutory guideline child support through a withholding order to the State Disbursement the sum of \$1680 per month. It is recognized that this net income is Husband's base salary, and he is expected to earn commissions and bonuses. The parties shall review Husband's income quarterly and Husband shall pay 28% of the additional net commission and bonus over to Wife within thirty days thereafter.”

¶ 5 On August 14, 2013, respondent filed a petition for adjudication and indirect civil contempt. Respondent alleged that petitioner had failed to provide 28% of his additional income over and above his base salary. Respondent further alleged that petitioner had failed to provide documentation for review of his quarterly income. The trial court declined to find petitioner in contempt, but ordered him to produce proof of income and tax returns for the years 2008 through 2012.

¶ 6 On September 20, 2013, petitioner filed a motion to modify child support pursuant to section 505(a) of the Marriage and Dissolution Act (Act) (750 ILCS 5/505(a) (West 2012)). In the motion, petitioner acknowledged that his yearly income had significantly increased since the parties entered the MSA. The most recent tax year (2007) at the time of petitioner and respondent's divorce showed petitioner's gross income to be \$138,535. In years 2010, 2011, and 2012, petitioner's gross income was \$369,217, \$362,247, and \$465,833 respectively. Petitioner

claimed that this constituted a substantial change in circumstances and argued that a 28% child support award based on his increased income would create a windfall for respondent in excess of the children's needs. Petitioner accordingly asked the trial court to deviate from the statutory guidelines and cap his gross income at \$300,000 for purposes of child support.

¶ 7 The trial court conducted a hearing on the matter on December 4, 2013. Petitioner testified that he received stock options when he began a new job. In January 2013, petitioner exercised some of those options when the company became publicly traded. As of September 20, 2013, he had received \$910,954 via his exercise of the stock options. On redirect examination, petitioner stated that the money received from the stock options would be treated like ordinary income for his 2013 tax purposes. The trial court granted petitioner's request to reduce child support and placed a cap of \$325,000 on his gross income, effective September 20, 2013. The trial court further ordered petitioner to pay respondent \$56,000 by January 31, 2014, which respondent admitted owing in back child support under the terms of the MSA.

¶ 8 On March 11, 2014, respondent filed her second petition for adjudication and indirect civil contempt, again alleging that petitioner had failed to pay 28% of his additional income. Respondent argued that, pursuant to the trial court's order of December 4, 2013, there was no deviation from the statutory guidelines prior to September 20, 2013. Therefore, respondent argued, petitioner had not been relieved of his obligation to pay additional support based on income he earned prior to September 20, 2013. Petitioner subsequently filed a motion to reduce his child support payments from 28% to 20% of his net income because one of the parties' children had reached majority and graduated high school.

¶ 9 On August 20, 2014, the trial court conducted a hearing on respondent's second petition for adjudication and indirect civil contempt and petitioner's motion to reduce child support. The

trial court first granted petitioner's motion and reduced the child support award to 20% of petitioner's gross income up to \$325,000 per year. Petitioner was ordered to pay an additional 5% in child support payments on any gross income between \$325,000 and \$400,000.

¶ 10 Regarding respondent's second petition, the trial court found that petitioner had failed to pay child support on the stock options exercised prior to September 20, 2013. In so finding, the trial court determined that the proceeds from the stock options constituted income for purposes of child support, characterizing the value gained to be in the nature of a bonus or commission. Accordingly, the trial court found an arrearage of \$153,040 as of October 31, 2013, and applied statutory interest of 9% on that amount as of November 1, 2013; this created an additional amount due of \$13,176.74. The court ordered petitioner to pay \$164,709 in monthly installments of \$13,725.77 on the first of each month until paid in full with interest continuing to accrue until completely paid.

¶ 11 On October 3, 2014, petitioner filed a motion to reconsider the trial court's order. The trial court denied the motion on January 20, 2015, and petitioner filed a timely notice of appeal.

¶ 12 II. ANALYSIS

¶ 13 Petitioner contends that the trial court erred in refusing to apply the \$325,000 cap to the proceeds from the stock options. We disagree. "The findings of the trial court as to net income and the award of child support are within its sound discretion and will not be disturbed on appeal absent an abuse of discretion." *In re Marriage of Breitenfeldt*, 362 Ill. App. 3d 668, 675 (2005). A trial court abuses its discretion only when its ruling is arbitrary, fanciful or unreasonable, or where no reasonable person would take the view adopted by the trial court. *In re Marriage of Lindman*, 356 Ill. App. 3d 462, 467 (2005). Here, the trial court properly exercised its discretion concerning petitioner's net income from exercised stock options prior to the income cap

modification..

¶ 14 The retroactive modification of child support is addressed in section 510(a) of the Act, which provides in relevant part: “[T]he provisions of any judgment respecting maintenance or support may be modified only as to installments accruing subsequent to due notice by the moving party of the filing of the motion for modification.” 750 ILCS 5/510(a) (West 2012). Thus, under the Act, “the earliest point to which retroactive modification of maintenance or support payments may be ordered is the date on which the nonmoving party receives ‘due notice’ from the moving party of the filing of the modification petition.” *In re Marriage of Hawking*, 240 Ill. App. 3d 419, 426 (1992).

¶ 15 Here, petitioner filed his first motion to modify child support on September 20, 2013 (in response to respondent’s first petition for adjudication and indirect civil contempt); nothing in the record indicates that respondent was not served with notice on the date the modification motion was filed. Therefore, the trial court correctly determined that the cap on petitioner’s income became effective as of September 20, 2013.

¶ 16 Petitioner does not address section 510(a) of the Act, and he does not contest the trial court’s finding that the proceeds from the sale of his stock options were “in the nature of a bonus or commission,” and thus income for the purposes of child support. See *In re Marriage of Colangelo v. Sebela*, 355 Ill. App. 3d 383, 392 (2005) (holding that the proceeds from a stock distribution are “income” for purposes of determining child support). Rather, petitioner simply asserts that the \$325,000 cap applied to his stock proceeds “because there could be no determination of net income until [petitioner] knew what his tax obligation was at the end of the year in 2013.”

¶ 17 The contention that petitioner could not determine his net income until the end of the year is erroneous. Petitioner testified at the hearing on December 4, 2013, that he had exercised stock options earlier in that year and his gross income was \$998,195 as of September 20, 2013. Section 505(a)(3) of the Act (750 ILCS 5/505(a)(3) (West 2012)), defines “net income” as:

[T]he total of all income from all sources, minus the following deductions: Federal and State income tax (properly calculated withholding or estimated payments), social security (FICA) payments, mandatory retirement contributions, union dues, dependent and individual health care insurance premiums, prior support or maintenance obligations, debt repayments reasonable and necessary to produce income, medical expenses necessary to preserve life or health, and other reasonable expenditures for the benefit of the child and other parent, exclusive of gifts.

¶ 18 The trial court heard evidence that petitioner had received \$910,954 in compensation for stock options as of September 20, 2013. Additionally, evidence was introduced that showed petitioner would have had to pay \$305,169 in federal income tax, \$45,547 in Illinois state tax, leaving a net for support of \$560,247. Pursuant to the parties’ marital settlement agreement, in effect prior to September 20, 2013, petitioner was to pay 28% of additional net bonus and commission. The trial court found petitioner’s income realized from the sale of stock options to be in the nature of a bonus or commission. See *In re Marriage of Colangelo v. Sebel*, 355 Ill.App.3d 383 (2005). Thus, the trial court did not abuse its discretion in finding the net income realized from petitioner’s sale of stock options was income for the purposes of child support and not subject to the income cap modification effective on September 20, 2013.

¶ 19 Petitioner next contends the trial court erred when it calculated an arrearage of child support based on stock options that included a period after the child support obligations had been

capped. Petitioner argues the Court should reverse the trial court's order requiring petitioner to pay \$153,040 in child support from the sale of stock options in 2013 plus interest. "The determination of the amount of a child support arrearage is a factual issue; therefore, we will disturb the decision of the trial court only if the decision is contrary to the manifest weight of the evidence." *In re Marriage of Smith*, 347 Ill. App. 3d 395, 399 (2004). Findings are against the manifest weight of the evidence only where the opposite conclusion is clearly evident or where the court's findings are unreasonable, arbitrary, and not based on the evidence. *In re Marriage of Smith*, 2012 IL App (2d) 110522, ¶ 46.

¶ 20 Here, there was sufficient evidence in the record upon which the trial court could calculate the amount of petitioner's arrearage and the date at which it accrued. At the hearing on December 4, 2013, petitioner testified that he had received \$998,195 in compensation between January 1, 2013, and September 20, 2013. This included \$910,954 from the 2013 sale of his stock options. Petitioner also did not object when respondent introduced evidence showing his federal and state income tax liabilities as of September 20, 2013. The record reflects that the trial court relied on the evidence of petitioner's projected tax liabilities when it calculated petitioner's \$153,040 arrearage as of October 31, 2013.

¶ 21 Petitioner argues that the trial court erred when it calculated an arrearage of child support that included the period between September 20, 2013, and October 31, 2013. However, the parties' MSA required a quarterly review of petitioner's income and petitioner was to pay 28% of the additional net commission and bonus over to respondent within 30 days thereafter. The trial court properly noted that September 30, 2013, was the applicable date for the quarterly review of petitioner's income, meaning that his child support payment would have been due at the end of October. The trial court's determination that the petitioner's arrearage was \$153,040

as of October 31, 2013, was supported by, and not contrary to, the manifest weight of the evidence.

¶ 22 Finally, petitioner contends that the trial court erred by not awarding him credit for \$58,160 in child support already paid during 2013. However, petitioner provides no calculations or citations to the record in support of his claim. Illinois Supreme Court Rule 341(h)(7) provides that contentions must include citation of the authorities and the pages of the record relied on. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); see also *In re Marriage of Hendry*, 409 Ill. App. 3d 1012, 1019 (2011) (“Arguments that do not comply with Rule 341(h)(7) do not merit consideration on appeal and may be rejected by this court for that reason alone.”). Furthermore, where an appellant has failed to support his or her arguments with citations to authority, this court will not research the issues on the appellant’s behalf. *Kic v. Bianucci*, 2011 IL App (1st) 100622, ¶ 23. (noting that a reviewing court is not a “depository” in which the appellant may “dump the burden of argument and research”). Thus, we conclude that petitioner has forfeited any argument pertaining to credit for child support payments made during 2013.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we affirm the judgment of the circuit court of Du Page County.

¶ 25 Affirmed.